S.B.Civil Revision Petition No.37/2007

Prakash Chandra.
vs.
Ratan Lal.

Date : 4.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. T Gupta, for the petitioner.
None present for the respondent.

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Heard learned counsel for the petitioner as nobody appeared on behalf of the respondent despite service.

The present revision petition has been filed to challenge the order dated 3.2.2007 passed by the executing court on petitioner/judgment debtor's application filed under Section 47 CPC.

Brief facts of the case are that the plaintiff/ respondent filed application for fixation of standard rent before the trial court and sought fixation of standard rent so as to increase the rent from Rs.150/- to Rs.5,000/- per month with effect from 1.9.1999. For this, the trial court framed issue no.1.

The trial court while deciding the issue no.1 held

that the standard rent of the suit premises can be Rs.1,000/- per month. However, there is no finding recorded by the trial court about the period from which the said standard rent is to be paid. Not only this, the trial court in last line, while deciding issue no.1, observed that in the opinion of the court, “at present” the rent of the suit premises can be fixed as Rs.1,000/- per month. Issue no.1 was decided partly in favour of the plaintiff. In the operative part of the decree dated 29.5.2006 also, the trial court declared standard rent of the suit premises as Rs.1,000/- without specifying the date as required under Section 6 (5) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950').

The plaintiff/decree holder sought to execute the decree dated 29.5.2006 and in that execution, the plaintiff claimed arrears of rent w.e.f. 1.9.1999.

The petitioner submitted objection under Section 47 CPC and prayed that the decree holder is executing the decree beyond the terms of the decree in as much as, there is no decree for fixation of standard rent from 1.9.1999 and, therefore, in view of the decree dated 29.5.2006, the fixation of standard rent can be from the date of decree.

Said objection of the petitioner was dismissed by the executing court vide order dated 3.2.2007 on the ground that the plaintiff's claim for fixation of

standard rent was from 1.9.1999 and the issue no.1 has been decided in favour of the plaintiff, therefore, the plaintiff can recover rent at the rate of Rs.1,000/- from the defendant/petitioner from 1.9.1999

Learned counsel for the petitioner submitted that the executing court cannot go beyond the decree nor enhance the liability of the petitioner. In the finding recorded on issue no.1 itself, it is clearly mentioned that the Court was satisfied that the rent of the suit premises at the rate of Rs.1,000/- can be the market rate “in present times”. In the operative part of the decree also, it has not been declared that the rent of the suit premises from 1.9.1999 shall be Rs.1,000/-.

I considered the submissions of learned counsel for the petitioner and perused the judgment and decree dated 29.5.2006.

In the judgment dated 29.5.2006, the trial court very specifically mentioned that at present, the shop can fetch the rent at the rate of Rs.1,000/-. The trial court has not fixed the date for making the standard rent applicable from as required under Section 6(5) of the Act of 1950, then in absence of any date fixed in the decree, the date of fixing the standard rent will be from the date of decree and not from any prior date

because of the reason that the issue was raised by the plaintiff and contested by the defendant on the question of applicability of the standard rent.

Since the relief has not been granted to the plaintiff as claimed by him in the plaint, then the relief which has not been granted specifically can be deemed to have been refused by implication.

In view of the above, the present revision petition is allowed, the order of the executing court dated 3.2.2007 is set aside, the decree under challenge shall be executable only for the rent at the rate of Rs.1,000/- per month from the date of decree i.e. 29.5.2006.

(PRAKASH TATIA), J.

S.Phophaliya